

**AN ORDINANCE AMENDING ARTICLE IV OF THE DURHAM CITY CODE,  
STREETS, PARKS AND RECREATION AND OPEN SPACE LAND IMPACT  
FEES, TO MAKE MISCELLANEOUS TECHNICAL CHANGES AND  
TO ENACT FEES APPLICABLE IN 2009**

WHEREAS the City of Durham has enabling legislation allowing the City to establish impact fees for new development to recoup some or all of the cost of the roads, recreation facilities, and open space needed by such development;

WHEREAS consistent with that legislation, the City has adopted a comprehensive impact fee ordinance that establishes rates in accordance with the traffic generation from various defined categories of land use and other relevant data;

WHEREAS the City Council periodically revises the ordinance to reflect new information regarding traffic generation and land use, and to fine tune the operation of the impact fee program;

WHEREAS in light of new information a revision to the impact fee ordinance is needed, and will be in the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM THAT:

**SECTION 1.** Article IV of the 2008 Durham City Code (recodified) (formerly Section 25 of the 1982 City Code as amended), is hereby amended by making the changes indicated below:

A. Deleting Sections 30-83 and 30-84 and substituting in their place the following:

**“Sec. 30-83. Application and Exemptions**

(a) Impact fees shall apply to all new construction in the applicable service zone for which a building permit is required, or for which a person has agreed to pay an impact fee for property being annexed by the City, except for the following circumstances:

- (1) Governmental authorities which are exempted by law from paying the fees.
- (2) Alterations, repairs, renovations, or expansion of a residential building where no additional residential units are created, and the use, as shown within the fee schedule, is not changed.
- (3) Replacement of a building or structure or manufactured home with a new building or structure or manufactured home of the same dwelling type or nonresidential use. Nonresidential alterations, repairs, renovations, or replacement buildings or structures must be of the same size and use as the original building or structure and must meet the same parking, acreage, or other fee basis requirements.
- (4) The construction of walls, fences, monuments, poles, pipelines, antennas, transmission lines, unmanned utility stations or substations, wells, water towers; off-

street parking decks, garages, or lots with vehicular parking as the primary use.

(5) Accessory land uses listed in Section 5.4 of the UDO, including accessory buildings, structures and signs.

(6) Incidental water sports, play courts, or play fields, provided that there is no solicitation of off-site traffic or business and there is no separate charge or membership fee associated with the use of such facilities.

(7) Temporary structures or uses.

(8) Croplands, pasturelands, incidental sheds and barns.

(b) No certificate of compliance shall be issued for any activity requiring the payment of impact fees or for property which through a utility extension or other similar agreement is required to pay an impact fee until the impact fees hereby required have been paid in full. Payment of such fees shall not relieve the developer from the obligations to comply with any other applicable city ordinances, regulations, and requirements, including but not limited to, the land development regulations of the UDO.

#### **Sec. 30-84. Computation of fees.**

(a) The Inspections Department shall determine and collect all impact fees. The fees to be collected shall be determined at the time of building permit application. Where properties are subject to a utility extension or similar agreement requiring payment of impact fees, the fee shall be calculated with reference to the date of the building permit application for each property included in such agreement, notwithstanding when such fee is paid. Before a certificate of compliance is issued for any part of a building, the impact fees for the entire structure must be paid in full. The Inspections Department shall have the authority to determine the appropriate use category, using the definitions in this ordinance, the definitions in the UDO, similarities between proposed uses and defined uses, historic patterns of traffic generation in the Durham community, and reasonable professional discretion.

(b) The impact fees shall be as set by the City Council, as found in the Fee Schedule of the City of Durham.

#### **ALTERNATIVE STREET IMPACT FEE CALCULATION**

In the event that a feepayor believes that the attributable costs for improving the system of streets to serve the feepayor's new construction is less than the street impact fee schedule, the feepayor may submit an alternative fee calculation to the Department of Public Works based upon the following:

$$\text{Impact fee} = (\text{PHT}) \times (\text{DR}) \times (0.75 \times \text{Cost per trip end}^1)$$

where

PHT = the number of peak hour trips of the new construction, determined using the peak hour (AM or PM) that generates the highest number of trips

DR = diversion ratio (1 - the percent of diverted trip).  
The diversion ratio is one for all uses except retail uses, and

COST = the capital costs of providing streets, less: credits for existing street deficiencies, through-trip discount, NCDOT Transportation Improvement Plan contributions, double payment credits, and time differential adjustments.<sup>2</sup> For purposes of this calculation, it is the policy of the City to only charge 75% of the actual cost per trip end.

The Department of Public Works shall determine in its discretion whether the above calculations are reasonable, giving consideration, among other things, to generally accepted professional practices and methodology, appropriateness and applicability of submitted data on peak hour trips, local conditions, and qualifications of professionals submitting the data. If the Director of the Department of Public Works determines that the calculations are reasonable, the Director may authorize use of the alternative street impact fee for the new construction. The cost of performing the alternative fee calculation shall be borne by the fee payor.

<sup>1</sup>The cost per trip end for the south zone is \$2,782.  
The cost per trip end for the north service zone is \$1,051  
The cost per trip end for the downtown service zone is \$581

<sup>2</sup>These credits and offsets to the calculation of costs are further explained in City of Durham Transportation Impact Fee Study Update, dated February 6, 2008.

(c) The Inspections Department shall calculate the amount of the applicable impact fees due for each structure by:

- (1) Determining the applicable impact fee service zone;
- (2) Verifying the type and number of residential dwelling units and the type of nonresidential new construction and square footage or other applicable measuring criteria for which each certificate of compliance is sought;
- (3) Determining the applicable impact fee per unit or other measuring criteria set forth in the fee schedule or in subsection 30-84(b); and
- (4) Multiplying the applicable impact fee per unit or other measuring criteria set forth in the fee schedule or in subsection 30-84(b) by:
  - a. The appropriate number of residential dwelling units (or, for hotel/motel, the number of rooms), or
  - b. The appropriate number of the measuring criteria for nonresidential new construction (e.g., parking spaces, square feet/1,000, acres, students).

(d) The Inspections Department shall take the following special cases into account when calculating the applicable impact fees.

(1) *Alterations, expansions, or redevelopments.* In the case of an alteration, expansion, renovation or redevelopment of an existing development, impact fees shall be levied based upon the **net increase**, if any, above that which the existing development would pay.

(2) *Change of use or the addition of other uses.* In the case of a change of use, such as residential to office, or the addition of other uses such as daycare to a church, which increase the fee rate or total fee above that which the existing use would pay, impact fees shall be paid based upon the **net increase** in the fee for the new use as compared to the previous use. There shall be no reimbursement of any impact fees due to a change of use which has a lower fee than the current use, nor shall there be any reimbursement if a use is terminated.

(3) *Mixed use developments and buildings.* In the case of mixed use developments, whether or not denominated "mixed use" in zoning, or a mixture of uses in buildings, or multiple tenants or unit owners, impact fees shall be based on individual uses, or, if the Inspections Director determines that is unfeasible or impractical, on the prevailing use, as determined in the discretion of the Inspections Director in light of traffic generation of the different uses,

(4) *"Shell only" permits.* In the case of a "shell only" permit, the impact fee amounts may be based on the use or uses used to determine the amount of required off-street parking or as shown on the building permit when no off-street parking is required. If it is found during review of the "up-fit" permit that the uses differ from those uses for the shell, a determination shall be made as to whether or not an additional fee or refund is due. Before the first tenant up-fit certificate of compliance is issued, the impact fees for the entire structure must be paid in full.

(5) *Size of retail establishments.* In the case of retail uses which share common drives or parking areas and which are eligible for the off-street parking requirements of the "stores, retail high volume" use classification contained in the UDO, all such retail uses, including those located on separate outparcels, shall pay a street impact fee based on the appropriate square footage range of all the retail uses located within the shopping center even if this is a greater fee than for any single retail use or other combinations of retail uses.

(6) *Unscheduled activity.* If the type of new construction activity is not specified on the street impact fee schedule, the Inspections Department shall use the street impact fee applicable to the most nearly comparable type of land use on the street fee schedule. If the feepayor disagrees with the determination of the Inspections Department, then the feepayor shall use the alternate street impact fee calculation set forth in this chapter, with the cost per trip end as set forth in the alternative street impact fee calculation schedule.

(7) *Incidental use.* In the case where there is a part of a structure used that is accessory or customary to activity within the structure and that is used primarily by those occupying the structure, then the primary use of the structure shall prevail for the impact fee calculation.

(8) *Vacant parcel with proof of former structure.* In the case where a parcel is vacant but has had a structure on the parcel within five (5) years of the effective date of this chapter [effective November 1, 1989], the Inspections Department shall consider the use of the former structure in calculating the impact fee upon proof of such structure as provided by the feepayor. Impact fees shall be paid upon the **net increase in** the fee for the new use as compared to the previous use. There shall be no reimbursement of any impact fees due to a change of use which has a lower fee than the former use.

(9) *Change in Impact Fee Schedule.* In the event that the impact fee schedule is changed,

the City will assess the impact fee based on the fee schedule in effect at the time the developer submits a completed building permit application in a form approvable by the City without further modification, including:

- i. All necessary site plan submissions;
- ii. Architectural, electrical, mechanical and plumbing drawings; and
- iii. All other submissions to the City necessary to constitute a completed building permit application form.

There shall be no reimbursement or recalculation of any impact fees due to a lower fee."

B. Modifying Section 30-86 as described below:

- In Sec. 30-86(a)(4), in the second sentence thereof, delete the term "not less than 60 days subsequent to the date" and substitute the term "within 180 days after";
- In Sec. 30-86(b)(3), in the second sentence thereof, delete the term "not less than 60 days subsequent to the date" and substitute the term "within 180 days after";
- In Sec. 30-86(c)(2), in the second sentence thereof, delete the term "not less than 60 days subsequent to the date" and substitute the term "within 180 days after";
- In Sec. 30-86(c)(2)(f), delete the word "county" which appears before the phrase "department of parks and recreation."

**SECTION 2.** Attachment A to this Ordinance, Changes to Fee Schedule, Part 4-112. Impact Fees Imposed on New Construction, is hereby adopted as part of the Fee Schedule of the City of Durham, and the chart, schedules, and fees contained in Attachment A shall replace those shown in the corresponding charts and schedules currently shown in the Fee Schedule. In addition the Street Impact Fee Schedule, Open Space Land Impact Fee Schedule, and Parks and Recreation Impact Fee Schedule effective until 7-1-2008 as shown in the Fee Schedule shall be deleted.

**SECTION 3.** This ordinance shall become effective on July 1, 2008.

**SECTION 4.** All ordinances in conflict are hereby repealed to the extent of the inconsistency.

**APPROVED BY  
CITY COUNCIL**

MAY 5 2008

**CITY CLERK**



**ATTACHMENT A, CHANGES TO FEE SCHEDULE, PART 4-112, IMPACT FEES  
IMPOSED ON NEW CONSTRUCTION** (adopted as part of an Ordinance Amending Article  
IV of the Durham City Code, Streets, Parks, and Recreation and Open Space Impact Fees)

<b>STREET IMPACT FEE SCHEDULE</b>						
Land Use	North (Zone 5)	South (Zone 4)	Downtown (Zone 6)	North (Zone 5)	South (Zone 4)	Downtown (Zone 6)
	Effective 7/1/08 - 6/30/09	Effective 7/1/08 - 6/30/09	Effective 7/1/08 - 6/30/09	Effective 7/1/09 forward	Effective 7/1/09 forward	Effective 7/1/09 forward
<b>Residential</b>						
Single Family (per dwelling unit)	\$372	\$983	\$205	\$531	\$1,405	\$293
Accessory Dwelling Unit (per dwelling unit)	\$372	\$983	\$205	\$531	\$1,405	\$293
Multifamily (per dwelling unit)	\$228	\$604	\$126	\$326	\$862	\$180
Manufactured Home Park (per dwelling unit)	\$217	\$574	\$120	\$310	\$821	\$171
Retirement Community - Detached (per dwelling unit)	\$96	\$253	\$53	\$137	\$362	\$76
Retirement Community - Attached (per dwelling unit)	\$40	\$107	\$22	\$58	\$153	\$32
Assisted Living (per bed)	\$81	\$214	\$45	\$116	\$306	\$64
Continuing Care Retirement Community (per dwelling unit plus assisted living beds)	\$107	\$282	\$59	\$152	\$403	\$84
Hotel/Motel (per room)	\$257	\$682	\$142	\$368	\$974	\$203
<b>Recreational</b>						
Amusements/Fairgrounds (per acre)	\$1,453	\$3,846	\$803	\$2,076	\$5,494	\$1,147
Public Park or Playground (per acre)	\$22	\$58	\$12	\$32	\$83	\$17
Racquet Club (per court)	\$1,232	\$3,262	\$681	\$1,760	\$4,660	\$973
Golf Course (per acre)	\$110	\$292	\$61	\$158	\$417	\$87
Driving Range (per tee)	\$460	\$1,217	\$254	\$657	\$1,739	\$363
Miniature Golf Course (per hole)	\$121	\$321	\$67	\$173	\$459	\$96
Theater/Arena/Stadium (per seat)	\$26	\$68	\$14	\$37	\$97	\$20
Multiplex Movie Theater (per seat)	\$29	\$78	\$16	\$42	\$111	\$23
Skating Rink (per 1,000 s.f.)	\$868	\$2,298	\$480	\$1,240	\$3,283	\$686
Health Club (per 1,000 s.f.)	\$1,490	\$3,943	\$824	\$2,128	\$5,634	\$1,177
Bowling Alley (per 1,000 s.f.)	\$1,302	\$3,447	\$720	\$1,860	\$4,924	\$1,028
Recreation Community Center (per 1,000 s.f.)	\$603	\$1,597	\$333	\$862	\$2,281	\$476
General Recreation (per acre)	\$2,122	\$5,618	\$1,173	\$3,032	\$8,026	\$1,676
<b>Industrial</b>						
Manufacturing (per 1,000 s.f.)	\$272	\$721	\$150	\$389	\$1,029	\$215
Warehouse/Distribution (per 1,000 s.f.)	\$173	\$458	\$96	\$247	\$654	\$137
Truck Terminal (per acre)	\$2,678	\$7,089	\$1,480	\$3,826	\$10,126	\$2,115
Mini-Warehousing (per 1,000 s.f.)	\$96	\$253	\$53	\$137	\$362	\$76
<b>Institutional</b>						
Place of Worship (per 1,000 s.f.)	\$265	\$701	\$146	\$378	\$1,002	\$209
Hospital (per 1,000 s.f.)	\$441	\$1,168	\$244	\$631	\$1,669	\$349
Elementary School (per student)	\$154	\$409	\$85	\$221	\$584	\$122
Middle School (per student)	\$195	\$516	\$108	\$279	\$737	\$154
High School (per student)	\$151	\$399	\$83	\$215	\$570	\$119
Daycare (per 1,000 s.f.)	\$1,457	\$3,856	\$805	\$2,081	\$5,508	\$1,150
Junior College/Tech Institute (per 1,000 s.f.)	\$408	\$1,081	\$226	\$583	\$1,544	\$322
College or University (per 1,000 s.f.)	\$397	\$1,052	\$220	\$568	\$1,502	\$314
Major Research University (per 1,000 s.f.)	\$357	\$944	\$197	\$510	\$1,349	\$282
Group Care Facilities (per bed)	\$81	\$214	\$45	\$116	\$306	\$64
<b>General Retail (per 1,000 s.f.)</b>						
< 50,000 sq. ft.	\$1,170	\$3,096	\$647	\$1,671	\$4,423	\$924
50,000 - 99,999 sq. ft.	\$1,493	\$3,953	\$826	\$2,134	\$5,647	\$1,179
100,000 - 199,999 sq. ft.	\$1,324	\$3,505	\$732	\$1,892	\$5,008	\$1,046
200,000 - 500,000 sq. ft.	\$1,107	\$2,931	\$612	\$1,582	\$4,187	\$874
> 500,000 sq. ft.	\$1,056	\$2,795	\$584	\$1,508	\$3,992	\$834
<b>General Office (per 1,000 s.f.)</b>						
Medical Office	\$1,368	\$3,622	\$756	\$1,955	\$5,175	\$1,081
< 50,000 sq. ft.	\$570	\$1,509	\$315	\$815	\$2,156	\$450
50,000 - 99,999 sq. ft.	\$636	\$1,685	\$352	\$909	\$2,406	\$503
100,000 - 149,999 sq. ft.	\$655	\$1,733	\$362	\$935	\$2,476	\$517
150,000 - 199,999 sq. ft.	\$581	\$1,538	\$321	\$830	\$2,198	\$459
> 200,000 sq. ft.	\$522	\$1,383	\$289	\$746	\$1,975	\$413
<b>Office Park (per 1,000 s.f.)</b>						
< 50,000 sq. ft.	\$890	\$2,356	\$492	\$1,272	\$3,366	\$703
50,000 - 99,999 sq. ft.	\$835	\$2,210	\$462	\$1,193	\$3,158	\$659
100,000 - 149,999 sq. ft.	\$769	\$2,035	\$425	\$1,098	\$2,907	\$607
150,000 - 199,999 sq. ft.	\$728	\$1,928	\$403	\$1,040	\$2,754	\$575
> 200,000 sq. ft.	\$669	\$1,772	\$370	\$956	\$2,532	\$529
<b>Business Park (per 1,000 s.f.)</b>						
< 50,000 sq. ft.	\$533	\$1,412	\$295	\$762	\$2,017	\$421
50,000 - 99,999 sq. ft.	\$530	\$1,402	\$293	\$757	\$2,003	\$418
100,000 - 149,999 sq. ft.	\$522	\$1,383	\$289	\$746	\$1,975	\$413
150,000 - 199,999 sq. ft.	\$519	\$1,373	\$287	\$741	\$1,961	\$410
> 200,000 sq. ft.	\$515	\$1,363	\$285	\$736	\$1,947	\$407

- (1) Square footage shall be calculated according to gross floor area (the area within the inside perimeter of the exterior walls, with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of court and vent shafts).
- (2) Student-the total student capacity of any school or any addition to an existing school.
- (3) A standard based on acreage refers to the total land and water surface area of any lot or lots on which any primary, accessory, or incidental use or portion thereof is located.
- (4) Hotels or motels that contain any convention or civic center shall, in addition to paying street impact fees based on rooms shall also pay the street impact fee based on general recreation for the civic center or convention center.

<b>OPEN SPACE LAND IMPACT FEE SCHEDULE</b>		
	Effective 7/1/08 - 6/30/09	Effective 7/1/09 Forward
<i>Residential</i>		
Single Family	\$148/unit	\$222/unit
Manufactured Home Park	\$155/unit	\$233/unit
Multifamily	\$118/unit	\$176/unit
<b>PARKS AND RECREATION FACILITY IMPACT FEE SCHEDULE</b>		
	Effective 7/1/08 - 6/30/09	Effective 7/1/09 Forward
<i>Residential</i>		
Single Family	\$354/unit	\$425/unit
Manufactured Home Park	\$372/unit	\$446/unit
Multifamily	\$281/unit	\$337/unit